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RE: US v. Microsoft proposed final order

In my position as Chief Systems Architect for Oddcast, Inc., a software company based in New York, I have had the opportunity to observe the effects of Microsoft's monopolies on our business and our competitors.

I am writing to submit my comments on the proposed final order in the antitrust case against Microsoft. The remedies described in order do not seem at all satisfactory and will have a negative effect for business who wish to compete with Microsoft.

First off, the fact that the structural remedy initially ordered by Judge Jackson has been abandoned is quite disturbing. Judge Jackson reached his conclusions after being involved in the case for a long time. His proposed remedies were a reaction not just to the severity of the crime but also to the manipulative manner in which Microsoft behaved – and continues to behave.

The new remedies are not strong enough to penalize a company that has not only been found to violate antitrust law, but which has also failed to abide by previous agreements made between Microsoft and the DOJ. And of equal importance and urgency, the remedies do not look sufficient to curb Microsoft's tendencies toward anti-competitive behavior now and in the future.

The provisions in J1 and J2 are becoming widely recognized as providing too much opportunity for Microsoft to inhibit interoperability with software considered part of the free software movement. Several free software programs are considered significant competitors to Microsoft's products. This is acknowledged even by Microsoft. Microsoft should not be allowed to limit access to information used in programs such as Apache or the Linux operating system just because there is no commercial body responsible for these software products. While the software itself may be not for profit, there are many business that depend upon this software to make their profits and Microsoft should not be allowed to shut

them out. I believe that the provisions in J1 and J2 will have a negative effect on the ability for business to compete with Microsoft and will help to expand Microsoft's current monopolies and provide Microsoft with opportunities to establish new monopolies.

The term of the agreement as proposed is too short. While the software industry itself is dynamic, the basic behavior of monopolies is not and five to seven years is not long enough to ensure that Microsoft's anti-competitive practices will be curbed.

The Justice department should not allow Microsoft to have such control over the proposed Technical Committee. Microsoft should not be allowed to appoint any members of the Technical Committee. I cannot imagine why a company found to be in violation of the law would be allowed to choose any member of it's oversight committee, especially when there are only three members. By allowing Microsoft to place someone of their choosing, they will have influence over the selection of the third member which could mean that the committee starts out with a two thirds pro-Microsoft majority. The Justice Department should be responsible for the appointment of all three members.

The level of secrecy surrounding the actions of the Technical Committee will also have a negative effect on it's ability to stay honest and fair. And the fact that they will be paid for and managed by Microsoft should remove even the last scrap of objectivity from the committee. If this proposal is to work, the Technical Committee will need to be restructured so that it has greater independence and more power.

Over all, I think that the proposed final order is not strong enough and should be reevaluated. In the seven years that Microsoft has been involved in proceedings with the Department of Justice, they have not seen their business harmed. Instead they have grown dramatically and further reinforced their monopoly position in many areas. They have openly flaunted consent decrees and tied up the investigation of their actions in a manner which only a company which can accumulate billions of dollars a year from its monopolistic position is able.

The proposed remedies only serve to reinforce the status quo under which Microsoft has been allowed to grow unchecked – despite having been found to have violated the law. Without stronger remedies, Microsoft will only continue to stifle competition.

Sincerely,

  
Charles Bennington